

REMARKS

Applicants respectfully request entry of the remarks submitted herein. Claims 1, 5-13 and 16-20 are currently pending. Reconsideration of the pending application is respectfully requested.

The 35 U.S.C. §103 Rejections

Claims 1, 5-13, 16, 17, 19 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fazzina et al. (US Patent No. 3,852,501) in view of Suderman (US Patent No. 4,588,600), further in view of Evans et al. (US Patent No. 4,208,442) and in light of Kettlitz (US Patent No. 6,235,894). In addition, claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over the same combination of references. According to the Examiner, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the food product of Fazzina et al., in view of Suderman and Evans et al., to have comprised a combination of batter and a breading or bread-crumb layer, because Suderman teaches that a combination of a batter and a breading are relied upon to give a crispness and an appearance reminiscent of a fried food product. OA at pages 10-11. These rejections are respectfully traversed.

First, it is critical that the ‘multipurpose’ limitation of the claimed dry mix be appreciated. Applicants respectfully refer the Examiner to page 7, lines 20-25 of the specification, which states

The dry mix of the current invention is multifunctional (is multipurpose dry mix), and it can be combined with sweet, bitter, sour and salty flavours without any limitation. It can be applied as is, i.e. without any extra treatment such as cooking, baking or frying. Alternatively the dry mix of the current invention is suitable for cooking, baking or frying as well, and it can be frozen and followed by re-heated in a conventional way or in the microwave without damaging the mix.

On the other hand, Fazzina et al., Suderman and Evans et al. all disclose a dry mix for the purpose of giving a fried appearance to baked food. Because the cited references disclose a dry

mix for a very particular purpose, the claimed multipurpose dry mix is inherently different from the dry mixes disclosed in the cited references.

In addition, Applicants note that the dry mix coating as described by Fazzina et al., simply because it can be spread onto a food product prior to baking, is not the same as the claimed spread as asserted by the Examiner (OA at page 3). The dry mix described by Fazzina et al., as well as the dry mixes described by Suderman and Evans et al., are used as a coating to enrobe a food product for the purpose of baking, while the claimed spread, which is but one use for the claimed multipurpose dry mix, is to be consumed as is (e.g., as a marmalade, peanut butter, etc.; see, e.g., Example 4).

Second, the use of vital wheat gluten is not *required* in the dry mix described by Fazzina et al.; indeed, the farinaceous material in Fazzina et al. can be wheat flour, corn flour, oat flour or mixtures of those. Suderman also does not *require* gluten in the composition (see, for example, column 4, line 47). In addition, Evans et al. teaches using a protein in the dry mix, but the required proteins are chosen from the group of gelatin, sodium caseinate, soy protein isolate or egg albumin (see, for example, column 3, lines 3-12). None of the references, alone or in combination, indicate that vital wheat gluten is a required ingredient (e.g., not as a component of flour) and, thus, one of ordinary skill in the art would not arrive at the claimed multipurpose dry mix by combining the teachings of Fazzina et al. with the teachings of Suderman and Evans et al.

Third, dependent claim 5 requires that one of the carbohydrates in the dry mix be a polyol, which plays a role in the freeze-thaw stability of the dry mix. None of the cited references disclose the use of a polyol in their dry mixes.

Fourth, Fazzina et al. teaches the use of a modified starch in an amount of 5-18%. However, Fazzina et al. teaches a long list of modified starches having a variety of different modifications, each of which impart very different properties to the starch. Although Evans et al. teaches the use of 1-octenyl succinic anhydrite-modified starch in an amount of 0 – 13%, this disclosure in Evans et al., in combination with the disclosures of Fazzina et al. and Suderman, does not make obvious the claimed use of n-octenyl succinate-modified starch in an amount of 1-10%, particularly when the functional capabilities of the dry mixes are so different.

Given the significant differences in ingredients between the claimed multipurpose dry mix and the dry mixes disclosed in the cited references as outlined above, the claimed

Applicant : Frans Johan Sarneel et al.
Serial No. : 10/550,936
Filed : September 28, 2005
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Attorney's Docket No.: 19790-0003US1 / CER03-0009

multipurpose dry mix having the particularly claimed features (e.g., freeze-thaw, stable viscosity, and baking stability) can not be considered obvious. In other words, different ingredients in different amounts for a different use cannot render the claimed dry mix obvious. As indicated in previous Responses, this appears to be a case in which the Examiner has improperly used hindsight to reconstruct the invention by picking and choosing references that disclose the individually claimed elements.

Given the disclosure in Fazzina et al., Suderman, and Evans et al., it would be difficult, if not impossible, for one of ordinary skill in the art to predict what particular combination of ingredients from the cited references would provide the claimed features. Thus, one of skill in the art would not arrive at the claimed invention by combining Fazzina et al. with the teachings of Suderman and Evans et al. In view of the remarks herein, Applicants respectfully request that the rejection of the pending claims under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

Applicants respectfully request allowance of claims 1, 5-13 and 16-20. Please apply the \$130 fee for the enclosed Petition for One-Month Extension of Time any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

/May 13, 2010/

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